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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,614	02/19/2002	Ralph L. Bass	1136/9	5599

7590 11/04/2003

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/078,614

Applicant(s)

BASS, RALPH L.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of Amendment filed on August 11, 2003. Claims 1-15 are pending. Claim rejections made under 35 U.S.C. § 112 as indicated in the previous Office action dated May 9, 2003 are withdrawn in view of applicants' remarks and amendment. Claim rejections made under § 103 as indicated in the same Office action are maintained for the reasons of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedrichs (DE 29616496) in view of Taylor et al. (US 5869104) ("Taylor) and New York Daily News (July 19, 2001).

Rejection is maintained for the reasons of record.

2. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Friedrichs, Taylor, and New York Daily News as applied to claims 1-12 above, and further in view of Koike et al. (US 6461623 B2) ("Koike").

Rejection is maintained for the reasons of record.

3. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedrichs, Taylor, and New York Daily News as applied to claims 1-12 above, and further in view of Aldrich (1996).

Rejection is maintained for the reasons of record.

R s p o n s t o A r g u m e n t s

Applicant's arguments filed on August 11, 2003 have been fully considered but they are not persuasive in part.

Examiner respectfully disagrees with applicants' interpretation of the Friedrichs patent. While applicants describe the prior art as a method of physical "peeling" the skin affected by cellulite, the reference in fact teaches the cellulite is treated by "**stimulating** the lymph flow", which examiner views is massaging. Thus examiner maintains the position that it is well known in the art to treat cellulite by massaging the affected skin with sea salts.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, applicants argue by distinguishing the individual reference with the claimed invention. Applicants argue that the Friedrich patent is not a solid block but ointment; that the Taylor invention is limited to treating skin infection; and that New York Daily News teaches deep massage but no solid salt block. It is viewed that these arguments merely attack references individually. The rejection, however, is made in view of the collective teachings of the prior arts. Examiner views that applicants have not addressed the issue of the case, which is, whether, given the teaching to treat cellulite by stimulate lymph flow by using sea salt composition and/or by massaging, a routineer would have been motivated to use the Taylor salt block, which is also known to treat skin conditions, to stimulate lymph flow and thus to treat cellulite.

With regards to the rejection over Friedrichs, Taylor, and New York Daily News and further in view of Koike, applicants assert that the method of “scrubbing” is different from the claimed method of “gently gliding” the solid salt block, examiner views that there is no patentable distinction between the two methods because both methods are used to produce massaging effect on the skin. Examiner reiterates that the Koike reference was cited to show that it would have been obvious to use NaCl and KCl for massaging the skin to treat cellulite in view of the combined references. While applicants allege through out the arguments that the combination of the references produce some irrational product and method, the argument does not address how the motivations that examiner proposed in the previous Office action is nonobvious in view of the collective teachings of the references.

The fact that Aldrich does not mention whether NaCl or KCl are naturally found in human extracellular or intracellular fluid is irrelevant. The lack of such teaching does not change the fact that these salts are inherently present in the human extracellular/intracellular fluid. While applicants dismiss the issue of whether the high purity NaCl contains certain impurity such as phosphate ions, examiner views that the issue in rejection made further in view of Aldrich precisely is whether it would have been obvious to a skilled artisan that phosphate ions are present in the Taylor salt block, which applicants concede.

Conclusion

No Claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
October 31, 2003


THEODORE J. CRIARES
PRIMARY EXAMINER
GROUP 1200/1600